



**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534**

July 7, 2008

Mr. James Hood
Hood Coal Corporation, Inc.
P.O. Box 97
Jamestown, Tennessee 38556

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7005 0390 0006 6034 9147

Subject: DIRECTOR'S ORDER NO. 08-0151
HOOD COAL CORPORATION, INC.
FENTRESS COUNTY, TENNESSEE

Dear Mr. Hood:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

If you or your attorney has questions concerning this correspondence, contact Jennifer Watson at (615) 532-0359.

Sincerely,

Patrick Parker, Manager
Enforcement and Compliance Section

PNP:jaw

cc: DWPC – EFO-Knoxville
DWPC – Enforcement File
Office of General Counsel

IN THE MATTER OF:

HOOD COAL CORPORATION, INC.

RESPONDENT

DIVISION OF WATER POLLUTION CONTROL

CASE NUMBER WPC08-0151

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “division” and the “department” respectively).

II.

Hood Coal Corporation, Inc. (hereinafter the "Respondent") is an inactive corporation conducting business within the state of Tennessee. The Respondent operates the Tar Gap Mine (hereinafter the "site"), an active surface bituminous coal & lignite mine in Fentress County, Tennessee. Service of process may be made on the Respondent through its registered agent, James P. Hood, President, Hood Coal Corporation, P.O. Box 97, Jamestown, Tennessee 38556.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined by T.C.A. § 69-3-103(20) and as herein described, has violated the Act.

V.

T.C.A. §69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Rule 1200-4-5-.08 states in part that a set of effluent limitations will be required in each permit that will indicate adequate operation or performance of treatment units used and that appropriately limit those harmful parameters present in the wastewater. Furthermore, it is unlawful for any person to increase the volume or

strength of any wastes in excess of the permissive discharges specified under any existing permit.

VI.

East Fork Obey River and Gwinn Cove and their unnamed tributaries, described herein, are “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, East Fork Obey River is classified for the following uses: domestic water supply, fish and aquatic life, recreation, irrigation, livestock watering and wildlife. The East Fork Obey River is listed as impaired for metals, pH, and loss of biological integrity due to siltation, as a result of resource extraction activities in Fentress, Overton, and Putnam Counties.

Gwinn Cove and its unnamed tributaries as well as the unnamed tributaries that flow into East Fork Obey River are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

FACTS

VII.

The Division of Water Pollution Control (hereinafter the “division”) issued NPDES Permit No. TN0071897 (hereinafter the “permit”) to the Respondent on August 12, 2004. The permit became effective on August 12, 2004, and expired on March 27, 2008, and authorized the Respondent to discharge treated wastewater and storm water to unnamed tributaries to the

East Fork Obey River and Gwinn Cove. The permit sets out numeric and narrative effluent limitations and monitoring requirements for discharge.

VIII.

On March 19, 2007, the division notified the Respondent by letter that NPDES permit TN0071897 would expire on March 27, 2008. In accordance with permit regulations, the permittee must submit an application for renewal at least 180 days before the permit expiration date. This letter reminded the Respondent that the due date for the permit renewal application was September 29, 2007.

IX.

On November 27, 2007, the division issued the Respondent a Notice of Violation (NOV) for failing to submit an application for renewal of coverage under an NPDES permit. The division requested the submittal of the application within 10 days of receipt of the NOV.

The division also reviewed the permit file and found that the Respondent had failed to submit 77 quarterly Discharge Monitoring Reports (DMRs) for 19 outfalls over the last 5 years, including:

6 outfalls – no DMR submittals in 1st quarter of 2005
3 outfalls – no DMR submittals in 2nd quarter of 2005
1 outfall – no DMR submittals in 1st quarter of 2006
1 outfall – no DMR submittals in 2nd quarter of 2006
19 outfalls – no DMR submittals in 3rd quarter of 2006
1 outfall – no DMR submittal in 2nd quarter of 2007
1 outfall – no DMR submittal in 3rd quarter of 2007
19 outfalls – no DMR submittals in 1st quarter of 2008

X.

To date, the division has not received the permit renewal application.

VIOLATIONS

XI.

By failing to comply with the terms and conditions of a NPDES permit, the Respondent has violated T.C.A. §§69-3-108(b) and 69-3-114(b), which states:

T.C.A. §69-3-108:

(b) It shall be unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

(6) The discharge of sewage, industrial wastes or other wastes into water, or a location from which it is likely that the discharged substance will move into waters of the state.

T.C.A. §69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

ORDER AND ASSESSMENT

XII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondent.


1. The Respondent shall, within 14 days of receipt of this ORDER AND ASSESSMENT, submit an application for renewal of coverage under an NPDES permit.
2. The Respondent shall submit future DMRs, as required by the permit, to the Manager of the Mining Section, Division of Water Pollution Control in the Knoxville Environmental Field Office, 3711 Middlebrook Pike, Knoxville, Tennessee.
3. The Respondent shall pay a CIVIL PENALTY of TWENTY EIGHT THOUSAND DOLLARS (\$28,000.00) to the division, hereby ASSESSED to be paid as follows:
 - a. The Respondent shall, within 30 days of receipt of this ORDER AND ASSESSMENT, pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00).
 - b. If the Respondent fails to comply with Part XII, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TEN THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.
 - c. If the Respondent fails to comply with Part XII, item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of ONE THOUSAND DOLLARS (\$1,000.00) per late DMR, not to exceed a total of EIGHTEEN THOUSAND DOLLARS (\$18,000.00) for all DMRs, payable within 30 days of default.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER AND ASSESSMENT. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing ORDER AND ASSESSMENT is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER AND ASSESSMENT will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 3rd day of July 2008.



Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§69-3-109, 115, allow the Respondent to secure review (appeal) of this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing before the Water Quality Control Board must be RECEIVED by the Department within THIRTY (30) DAYS of the date the Respondent received this Order and Assessment or it will become final (not subject to review).

Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot carry-on the practice of law. They may secure review (appeal) before the Water Quality Control Board only through an attorney licensed to practice law in Tennessee. Natural Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Any hearing of this case before the Board will be a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. Such hearings are in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses to testify.

At the conclusion of a hearing the Board has the authority to affirm, modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines (up to \$10,000.00 per day per violation). Furthermore, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to: Appeal of an Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments of the civil penalty shall be made payable to the “Treasurer, State of Tennessee,” and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.